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House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

HOUSE BILL 2214

AN ACT

AMENDING SECTIONS 14-3203, 14-5311, 14-5410 AND 41-603, ARIZONA REVISED STATUTES; RELATING TO VETERANS' SERVICES FIDUCIARY DUTIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-3203, Arizona Revised Statutes, is amended to
3 read:

4 14-3203. Priority among persons seeking appointment as personal
5 representative

6 A. Whether the proceedings are formal or informal, persons who are not
7 disqualified have priority for appointment in the following order:

8 1. The person with priority as determined by a probated will including
9 a person nominated by a power conferred in a will.

10 2. The surviving spouse of the decedent who is a devisee of the
11 decedent.

12 3. Other devisees of the decedent.

13 4. The surviving spouse of the decedent.

14 5. Other heirs of the decedent.

15 6. If the decedent was a veteran OR THE SPOUSE OR CHILD OF A VETERAN,
16 the department of veterans' services.

17 7. Forty-five days after the death of the decedent, any creditor.

18 8. The public fiduciary.

19 B. An objection to an appointment can be made only in formal
20 proceedings. In case of objection the priorities stated in subsection A of
21 this section apply, except that:

22 1. If the estate appears to be more than adequate to meet exemptions
23 and costs of administration but inadequate to discharge anticipated unsecured
24 claims, the court, on petition of creditors, may appoint any qualified
25 person.

26 2. In case of objection to appointment of a surviving spouse, other
27 than one whose priority is determined by will, by an heir or devisee
28 appearing to have a substantial interest in the estate, and the surviving
29 spouse is found by the court to be unsuitable, the court may appoint a person
30 who is acceptable to heirs and devisees, whose interests in the estate appear
31 to be worth in total more than half of the probable distributable value or,
32 in default of this accord, any suitable person.

33 3. In case of objection to appointment of a person who is not a
34 surviving spouse, other than one whose priority is determined by will, by an
35 heir or devisee appearing to have a substantial interest in the estate, the
36 court may appoint a person who is acceptable to heirs and devisees whose
37 interests in the estate appear to be worth in total more than half of the
38 probable distributable value, or, in default of this accord any suitable
39 person.

40 C. A person entitled to letters under subsection A, paragraphs 2
41 through 5 of this section and a person age fourteen and over who would be
42 entitled to letters but for the person's age may nominate a qualified person
43 to act as personal representative. Any person age eighteen and over may
44 renounce the person's right to nominate or to an appointment by appropriate
45 writing filed with the court. If two or more persons share a priority, those

1 of them who do not renounce must concur in nominating another to act for
2 them, or in applying for appointment.

3 D. Conservators of the estates of protected persons, or if there is no
4 conservator, any guardian except a guardian ad litem of a minor or
5 incapacitated person, may exercise the same right to nominate, to object to
6 another's appointment, or to participate in determining the preference of a
7 majority in interest of the heirs and devisees that the protected person or
8 ward would have if qualified for appointment.

9 E. Formal proceedings are required to appoint a personal
10 representative in any of the following situations:

11 1. If there is a person with a higher order of priority who has not
12 renounced or waived the person's right by appropriate writing filed with the
13 court.

14 2. If a priority is shared by two or more persons, as devisees under
15 subsection A, paragraph 3 of this section, or as heirs under subsection A,
16 paragraph 5 of this section, and one or more of them has not renounced or
17 concurred in nominating the person whose appointment is applied for.

18 3. If appointment is sought for a person who does not have any
19 priority under this section, under this paragraph the court shall determine
20 that those having priority do not object to the appointment, and that
21 administration is necessary.

22 F. A person is not qualified to serve as a personal representative who
23 is:

24 1. Under the age of majority as defined in section 1-215.

25 2. A person whom the court finds unsuitable in formal proceedings.

26 3. A foreign corporation.

27 G. A personal representative appointed by a court of the decedent's
28 domicile has priority over all other persons except if the decedent's will
29 nominates different persons to be personal representative in this state and
30 in the state of domicile. The domiciliary personal representative may
31 nominate another, who shall have the same priority as the domiciliary
32 personal representative.

33 H. This section governs priority for appointment of a successor
34 personal representative but does not apply to the selection of a special
35 administrator.

36 Sec. 2. Section 14-5311, Arizona Revised Statutes, is amended to read:

37 14-5311. Who may be guardian; priorities

38 A. Any qualified person may be appointed guardian of an incapacitated
39 person, subject to the requirements of section 14-5106.

40 B. The court may consider the following persons for appointment as
41 guardian in the following order:

42 1. A guardian or conservator of the person or a fiduciary appointed or
43 recognized by the appropriate court of any jurisdiction in which the
44 incapacitated person resides.

1 2. An individual or corporation nominated by the incapacitated person
2 if the person has, in the opinion of the court, sufficient mental capacity to
3 make an intelligent choice.

4 3. The person nominated in the incapacitated person's most recent
5 durable power of attorney.

6 4. The spouse of the incapacitated person.

7 5. An adult child of the incapacitated person.

8 6. A parent of the incapacitated person, including a person nominated
9 by will or other writing signed by a deceased parent.

10 7. Any relative of the incapacitated person with whom the
11 incapacitated person has resided for more than six months before the filing
12 of the petition.

13 8. The nominee of a person who is caring for or paying benefits to the
14 incapacitated person.

15 9. ~~A fiduciary, guardian or conservator or~~ IF THE INCAPACITATED PERSON
16 IS A VETERAN, THE SPOUSE OF A VETERAN OR THE MINOR CHILD OF A VETERAN, the
17 department of veterans' services.

18 10. A FIDUCIARY, GUARDIAN OR CONSERVATOR.

19 C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 may
20 nominate in writing a person to serve in that person's place. With respect
21 to persons who have equal priority, the court shall select the one the court
22 determines is best qualified to serve.

23 D. For good cause the court may pass over a person who has priority
24 and appoint a person who has a lower priority or no priority.

25 Sec. 3. Section 14-5410, Arizona Revised Statutes, is amended to read:
26 14-5410. Who may be appointed conservator; priorities

27 A. The court may appoint an individual or a corporation, with general
28 power to serve as trustee, as conservator of the estate of a protected person
29 subject to the requirements of section 14-5106. The following are entitled
30 to consideration for appointment in the order listed:

31 1. A conservator, guardian of property or other like fiduciary
32 appointed or recognized by the appropriate court of any other jurisdiction in
33 which the protected person resides.

34 2. An individual or corporation nominated by the protected person if
35 the protected person is at least fourteen years of age and has, in the
36 opinion of the court, sufficient mental capacity to make an intelligent
37 choice.

38 3. The person nominated in the protected person's most recent durable
39 power of attorney.

40 4. The spouse of the protected person.

41 5. An adult child of the protected person.

42 6. A parent of the protected person, or a person nominated by the will
43 of a deceased parent.

44 7. Any relative of the protected person with whom the protected person
45 has resided for more than six months before the filing of the petition.

1 8. The nominee of a person who is caring for or paying benefits to the
2 protected person.

3 9. ~~A fiduciary, guardian or conservator or~~ IF THE PROTECTED PERSON IS
4 A VETERAN, THE SPOUSE OF A VETERAN OR THE MINOR CHILD OF A VETERAN, the
5 department of veterans' services.

6 10. A FIDUCIARY, GUARDIAN OR CONSERVATOR.

7 B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this
8 section may nominate in writing a person to serve in that person's place.
9 With respect to persons having equal priority, the court shall select the one
10 it determines is best qualified to serve. The court, for good cause, may
11 pass over a person having priority and appoint a person having a lower
12 priority or no priority.

13 Sec. 4. Section 41-603, Arizona Revised Statutes, is amended to read:

14 41-603. Powers and duties

15 A. The department may act as guardian of an incapacitated veteran, the
16 incapacitated spouse of ~~an incapacitated~~ A veteran or minor children of a
17 veteran, or as conservator of the estate of a protected veteran or of the
18 veteran's incapacitated or surviving spouse or of the minor children of a
19 veteran. THE DEPARTMENT MAY ACT IN ALL FIDUCIARY MATTERS, INCLUDING AS POWER
20 OF ATTORNEY, TRUSTEE, CUSTODIAN OR REPRESENTATIVE PAYEE OF A VETERAN, SPOUSE
21 OF A VETERAN OR MINOR CHILD OF A VETERAN. THE DEPARTMENT MAY ACT AS THE
22 PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED VETERAN, DECEASED SPOUSE
23 OF A VETERAN OR DECEASED CHILD OF A VETERAN.

24 B. The department shall:

25 1. Assist veterans and their families and dependents in presenting,
26 providing and establishing claims, privileges, rights and benefits they may
27 have under federal, state or local law.

28 2. Inform veterans and their families and dependents and military and
29 civilian authorities about federal, state and local laws enacted to benefit
30 veterans and their families and dependents and members of the armed forces.

31 3. Collect information relating to services and facilities available
32 to veterans.

33 4. Cooperate with all government and private agencies receiving
34 services for or benefits to veterans and their families and dependents.

35 5. Conduct administrative reviews and, if possible, correct abuses or
36 prevent exploitation of veterans and their families or dependents and
37 recommend corrective legislation.

38 6. Adopt rules deemed necessary to administer this article.

39 7. Enter into agreements with veterans' organizations in this state
40 holding a charter granted by the Congress of the United States for the
41 beneficial interest of veterans.

42 8. Determine eligibility for special license plates issued pursuant to
43 section 28-2455.

1 9. Evaluate, supervise, approve and disapprove programs offered by
2 educational institutions and training establishments pursuant to United
3 States Code titles 10 and 38 and state rules, so that veterans and their
4 dependents may draw the educational allowance provided by federal law while
5 pursuing approved programs.

6 10. Approve or disapprove veterans' organizations seeking to solicit
7 money or other support in this state in the name of American veterans.

8 C. The department may acquire property for and construct and operate a
9 veterans' home facility in southern Arizona.

10 D. The department may acquire property for and establish and operate
11 cemeteries for veterans in this state.